

August 4, 2011

Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Subject: Cascade Community Credit Union Comments Re: Regulation CC - Availability of Funds and Collection of Checks, Docket No. R-1409; RIN No. 7100-AD68

Ms. Johnson:

Attached please find comments from Doug Myers of Cascade Community Credit Union based in Roseburg, Oregon. We call these comments to the attention of the Board as we believe Mr. Myers touches on some key points and issues of concern around the availability of funds in off-premises proprietary ATMs.

While we understand the initial comment period has passed, the Association urges the Board to consider the attached comments when reviewing the proposed regulatory changes.

Respectfully,

Jaycee Winn
Director of Regulatory Advocacy
Northwest Credit Union Association

From: Doug Myers

Sent: Monday, August 01, 2011 3:50 PM

To: 'regs.comments@federalreserve.gov'

Subject: R-1409 Supplement with attachment to our web-based comments; Reg CC rulemaking

FROM: Cascade Community Federal Credit Union, Roseburg OR

REQUEST CONSIDERATION OF LATE COMMENT

We respectfully request that the Federal Reserve Board (Fed) consider the following comments submitted after the close of the comment period for rulemaking. These comments are relevant to the rulemaking proposed by the Fed to amend Regulation CC (12 CFR 229). The facts presented in these comments following did not come to light during the comment period provided by the rulemaking. Yet we assert that these comments have merit because they are consequential not only to the financial institutions affected but also to consumers.

CHANGES TO PROPRIETARY ATM CHECK DEPOSIT RULES

We are recommending small changes to 229.19(a)(4). The change we suggest would be to strike the conditional phrase following the comma. The intended effect of this change would be to have deposits in an off-premises, proprietary ATM regarded as deposited on the day that those deposits are removed from the proprietary ATM regardless of frequency of deposit retrieval.

PROPRIETARY, OFF-PREMISES ATM DEPOSIT RETRIEVAL

The practice of many financial institution (FI) owners of ATMs located off-premises is to have a contract armored carrier retrieve the deposits on a periodic basis. Those deposits are then delivered, usually the same day, to the owner institution. According to 229.19, if timing of those retrievals is not more than twice per week, the depository FI can regard the deposit as occurring on the day of the retrieval.

NEXT DAY FUNDS AVAILABILITY OF TREASURY CHECKS

Perhaps in the past, the armored carrier retrieval schedule could be carefully choreographed to arrive at the FI so that all the funds of certain checks deposited in the proprietary ATM could be available next day. This is necessary since the funds of Treasury checks (T-checks), specifically, (when deposited to the account of the payee) are required (by both present and proposed rule) to be made available the next business day regardless of whether they are presented in person or not (229.10(c)(1)(i)).

OFF-PREMISES ATM NOON DEPOSIT CUT-OFF UNREALISTIC

Now, increasingly, the armored carriers are avoiding predictable schedules to minimize the potential for ambush. And it is logistically impossible for the armored carriers to service all off-premises, proprietary ATMs after noon, local, the earliest cutoff time permitted under 229.19(a)(5)(ii). Therefore, the noon cut-off time offered in the present rule to ATM owners is unworkable in reflecting realistic retrieval schedules for same-day delivery of all deposits at proprietary ATMs, and, therefore, next day availability of all checks (including Treasury checks).

PREFER DAILY PICK-UP, BUT...

It is our desired and consumer-friendly practice to schedule daily (each business day) pick-up of checks deposited at our proprietary ATMs so as to provide prompt processing (and, therefore funds availability). However, doing so may have negative compliance consequences for the owner FI.

TREASURY CHECK ATM DEPOSITS CANNOT BE KNOWN

The reality is that most ATMs do not permit the ATM owner to know the type of check deposited until the check is retrieved and examined. So, the FI may be faced with the decision to maintain a consumer-unfriendly pick-up schedule merely to maintain technical compliance with a rule for the tiny fraction of checks that are potentially deposited that are drawn on the US Treasury.

REFUSE T-CHECK DEPOSITS AT ATM?

Another nearly equally consumer-unfriendly alternative for the ATM owner FI would be to post a notice that US Treasury checks are not accepted at the off-premises ATM location.

TECHNOLOGY MAY HELP...BUT NOT YET

The practical fact is that owner FIs of off-premises ATMs usually have no way of knowing if a deposited check is drawn on the US Treasury. Technology may, in time, assist with remote deposit capture (RDC). This technology permits the owner FI of an ATM to 'see' the image of a deposited check. However, if this is the only compliant solution, then another equally consumer-unfriendly consequence may be the decommissioning of non-RDC ATMs where upgrade to RDC or replacement with an RDC-capable ATM is not economically feasible.

PAPER T-CHECKS REMAIN A PROBLEM

While US Treasury disbursements may be increasingly by direct deposit, paper checks are a fact of life for FIs and will remain so for some time.

CLARITY IN RULEMAKING

We recognize that the rule section we are suggesting changes to was not part of the Reg CC proposal for revision. However, we believe there is an opportunity for greater clarity in this regulation and the potential avoidance of unintended consequences.

IMPLEMENTATION OF CHANGE

We suggest that an interim final rule (with a delayed implementation date and concurrent comment period) could address any opposition to this change on an administrative basis.

CONSUMERS WIN + ATM OWNERS WIN

We believe opposition is unlikely as the proposed rule change is a win-win both for consumers and for FI owners of ATMs. The change would remove any incentive for a FI owner of an off-premises ATM to reduce retrieval schedule to merely maintain technical compliance with T-checks funds availability. Or, worse, to have the FI

elect to post notice of refusal to accept T-check deposits at their off-premises ATM.

SPECIFIC RULE TEXT

The change proposed in these comments:

"229.19(a)(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depository bank are considered deposited on the day the funds are removed from the ATM."

FURTHER COMMENTS RELATED TO THE MODEL FORMS

Indirectly related to the comments, we offer our further comments on the model forms of the proposed rulemaking. We have not found any of the proposed models that we believe describe, with sufficient accuracy for the consumer, our practices and policies. We believe that to select and adopt any of the offered models would be misleading and incomplete and, therefore a disservice to our member customers.

OFFERED DRAFT MODEL DISCLOSURE

We have attached a model disclosure which we have drafted believing it more accurately describes our practices and policies. We urge the Fed to consider the differences between it and the models offered in the proposed rule.

TABULAR FORMAT

Our offered model is not in tabular format only because we wish to ensure its accurate transmission for these comments. We embrace the tabular format for disclosures.

DISTINCTIVE MODEL FEATURES

There are several distinctive features of our offered model disclosure.

- 1- The first line articulates an accurate -- if general -- policy description.
- 2- It notes that the disclosure applies only to transaction accounts.
- 3- With many Federal holidays occurring on Mondays and one annually on a Thursday, we use Tuesday as our example to avoid days that might be confusing.
- 4- We relocated the 'if you need the funds right away' note to be proximate to the Timeline.
- 5- Accuracy requires that we address ATM deposits in our Timeline.
- 6- We believe it is essential to include brief explanations related to proprietary ATMs and the timing of ATM deposits along with 'business day'.
- 7- We conclude it is necessary to address checks drawn on a foreign bank.
- 8- Other smaller changes in our model address relevant improvements.

CONCLUSION

In conclusion, we urge the Fed to carefully consider our comments. You can be sure we have taken the many hours to thoughtfully compose this comment, however late, because we now see more clearly the effects of this complex rule and its proposed amendment. We desire to faithfully fulfill our duty to full and accurate disclosure to our member consumers, and to this end, request consideration of these comments because we believe they are right, reasonable,

and in the public interest.

MODEL FORM (text version attempt)

DEPOSIT AVAILABILITY POLICY DISCLOSURE

When a deposit is made to your transaction account, the funds are usually – but not always -- available immediately. For example, in certain situations, if you deposit a check on Tuesday, you may not be able to withdraw the funds from that check, and we may not pay another check or an electronic debit to your account with those funds, until Wednesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different kinds of deposits. Ask us about funds availability for deposits to non-transaction accounts.

If a check is returned unpaid after you have withdrawn the funds, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits made to transaction accounts open for more than 30 days. Longer delays may apply (see below) and different rules apply to new accounts (See *Availability Timeline for New Accounts*).

In making a deposit to your checking account. . . All deposited funds are usually available . . .

By electronic direct deposit	Immediately after we accept the deposit
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By wire transfer	Immediately after we accept the deposit
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In cash, deposited with our teller	Immediately after we accept the deposit
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By check, deposited with our teller	Immediately after we accept the deposit
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At our ATM (or by mail or night deposit)	The next business day after deposit is retrieved
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At another ATM retrieved	The fourth business day after deposit is retrieved
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NOTE: If you will need the funds from a check deposit right away, ask us when the funds will be available.

What is “Our ATM”? What is a “Business Day”? And what else should I know about “making” an ATM deposit?

Each ATM we own is identified as our machine. A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (the close of business) on a business day is considered deposited that day. Deposits at an ATM are considered to be made on the day your deposit is removed from the machine.

Check Cashing, Immediate Availability, and Holds on Account Funds

When we cash a check or make a check deposit available immediately, we will tell you if we hold funds in your account equal to the amount of the check or check deposit, and we will tell you when the funds on hold will be available.

Longer Delays May Apply

Funds from check deposits may be delayed up to (X) business days if:

- We believe your deposited check will not be paid.
- You deposit checks totaling more than (\$\$\$) on any one business day.
- You redeposit a check that had been returned unpaid.
- You have repeatedly overdrawn your account in the last 6 months.
- There is a bank emergency such as failure of computer or communications equipment.

We will tell you if we delay your ability to withdraw funds for any of these reasons, and when the funds will be available.

For each deposit of a check not drawn on a US financial institution, you may expect a delay until we collect the funds.

END MODEL FORM (TEXT ONLY)

Respectfully submitted --
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